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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 735

ELISA CAMPOS DELGADO, *et al.*,
Petitioners,

vs.

CENTRAL CAMBALACHE, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Opinion Below

The opinion of the Circuit Court of Appeals (R. 412-414) is correctly cited in the petition.

Statement of the Case

The facts and issues involved are fully and clearly stated in the opinion of the Supreme Court delivered by Mr. Justice de Jesús (R. 272 ff). Briefly stated they are as follows:

In the year 1920 Fernando González Cabeza borrowed the sum of $39,000 from Central Cambalache, Inc., secured by mortgages on the cane lands which Petitioners are seek-

ing to recover in this case. Petitioners presented testimony at the trial to show (Fernando González Campos R. 143 ff, Juan González Campos R. 51 ff) that the money so borrowed was used to purchase the land.

Up to December 18, 1925 nothing had been paid on the principal of the loan and only $628.99 had been paid on account of interest. Principal and interest then amounted to $56,574.07. Central Cambalache, Inc. on that date filed an ordinary action (not an ex-parte foreclosure proceeding) for collection of debt against the widow and children who, as universal heirs, had succeeded to the obligations as well as the assets of the deceased (R. 67) (Civil Code Sec. 608, 1930 Ed.). The summons and complaint were served on the defendants-petitioners by the Marshal who made his return (R. 89). None of the defendants-petitioners appeared or pleaded to the complaint whereupon judgment by default was entered by the Clerk at the request of the plaintiff, Central Cambalache, Inc., (R. 74). The judgment was notified to the parties by the Marshal (R. 76-77). Some three months later, after time for appeal had expired, plaintiff moved for a writ of execution (R. 77) which was issued by the District Judge (R. 78-79). The Marshall was directed to execute the judgment "on personal property belonging to said debtor and should the personal property be insufficient then the real property," etc. (R. 79-80). The return of the Marshal states that he carried out the order of execution by attaching the properties designated by the plaintiff (R. 81) which were in substance the properties mortgaged to secure the original loan.

The properties attached were sold at public auction on August 26, 1926 after the publication of edicts, etc. (R. 87 ff). Attorney Antonio Lens Cuena appeared at the sale in the name and in representation of the defendants and asked that the properties advertised for sale be sold in one block "inasmuch as the defendants were aware that that was the best way to obtain a more profitable bid" (R. 92). The properties were bid in by Oliver Matienzo & Co.,

S. en C., who acted on behalf of Central Cambalache, Inc., the real party in interest, for $56,574.07.

The heirs of Fernando González Cabeza remained in possession of the properties and continued to farm them until August 26, 1927. On that date they entered into an agreement with Oliver Matienzo & Co., S. en C. (R. 187) in which the widow, Elisa Campos, stated that she represented the one minor child, José Antonio, as guardian. By virtue of the said agreement they were paid the total sum of $28,675 for the growing cane crops and equipment, less $9,675.78 which they owed to Central Cambalache on account of crop loans. The contract provided in part as follows:

> "It is expressly agreed that Mrs. Elisa Campos and her children voluntarily waive and convey any other rights which they might have on the properties belonging to Oliver, Matienzo & Company, acquired by purchase at public auction and specially the right of homestead which they may have thereon, which waiver is made in favor of Oliver, Matienzo & Company, in consideration also of the amount received by the first, according to the act approved on March twelve, nineteen hundred and three."

Of the amount received under this agreement the part pertaining to the minor José Antonio, $2,072.50, was deposited in accordance with the terms of the contract with the American Colonial Bank (R. 238) in the names of the mother with *patria potestas* over the minor, and the District Attorney, pending approval of the contract by the Court (R. 191) for the minor. The agreement was never expressly approved by the Court but the approval of the Court was expressly obtained for the investment of the amount so deposited (R. 242), and for the reinvestment of the proceeds of the first investment (R. 247). Finally, a piece of property was purchased with part of the funds pursuant to the approval of the Court (R. 253). Upon becoming of age, José Antonio mortgaged this property to secure a loan for $500.00 (R. 290) which the Supreme Court held constituted a ratification of the transaction (R. 290).

After approximately fifteen years had elapsed the heirs, with the exception of Juan, who refused to join in the proceeding, brought the suit which is the subject of this Petition to annul the proceedings by which Oliver, Matienzo & Co., S. en C., obtained title on the execution sale and for profits of the farm from 1927 (R. 2-16).

The complaint states three grounds for the relief requested (R. 15):

> (a) That Central Cambalache, Inc. had no legal capacity to acquire the lands.
>
> (b) That the judgment ordering the execution sale was void because the summons in the action brought by Central Cambalache, Inc. in 1925 did not comply with statutory requirements and because the Clerk lacked power to enter the default judgment in that case.
>
> (c) That the defendants had been misled by representations to the effect that the purpose of the suit was to facilitate the mortgage of the properties to the Federal Land Bank for the benefit of the plaintiffs.

The third point (c) was decided by the District Court against the plaintiffs and was not urged in the Circuit Court.

Petitioners take the position that they are entitled to the return of the real property and all the profits therefrom although they had not in effect paid one cent for it, because of the alleged lack of capacity of Central Cambalache, Inc. to enter into the original transaction or to acquire the property at execution sale and because of the alleged procedural defects.

The principal basis of Petitioners' contention is that Central Cambalache by virtue of the fact that it held and controlled over 500 acres of land which is prohibited by the Joint Resolution of Congress of May 1, 1900 could not legally have made the original loan secured by the mortgage which Petitioners' predecessor voluntarily contracted with the corporation.

ARGUMENT

I

The Questions Presented

The first question presented by Petitioners (Petition 2) is divisible into two parts:

(a) Whether the interpretation and application of Section 3 of Joint Resolution of Congress of May 1, 1900, are drawn in question, and (b) if so, may the question as to whether a corporation owns and controls more than 500 acres of land be raised collaterally by a person dealing with the corporation.

The Circuit Court of Appeals held (R. 412, 413) that steps taken to enforce the so-called Five Hundred Acre Law embodied in the Joint Resolution of May 1, 1900, are matters of local law since the Joint Resolution "affixed no direct consequences to disobedience of its land policy for Puerto Rico." In so holding the Circuit Court of Appeals followed the decision of this Court in *Puerto Rico* vs. *Rubert Hermanos, Inc.,* 309 U. S. 543. Therefore, the decision of the Supreme Court of Puerto Rico in this case is purely a decision on a point of local law, namely, the measures which may be taken to enforce the policy of Congress as set forth in the Joint Resolution of May 1, 1900.

The second and third questions presented (Petition 2) on their face involve solely the interpretation of local law and procedure by the Supreme Court of Puerto Rico.

To justify a review it is incumbent on Petitioners, therefore, to show as to all questions presented that the Supreme Court of Puerto Rico was clearly wrong. *Bonet* vs. *Yabucoa Sugar Co.,* 306 U. S. 505. This the petitioners have failed to do.

II

Central Cambalache, Inc., had the power to loan the money secured by mortgage and to collect the debt.

Appellants contend that Central Cambalache, Inc., lacked legal capacity to contract the loan made to Fernando González Cabeza, to accept mortgage security for the loan, and to collect the debt by legal action and execution of the judgment against real property of the debtor: (1) because it is prohibited by Joint Resolution of Congress of May 1, 1900 (the 500 Acre Law) and (2) because it is prohibited by its Articles of Incorporation.

The opinion of the Supreme Court on this point will be found at pages 279-283 of the Record and of the District Court at pages 34 and 35 of the Record.

Both courts held that the Corporation had the power to contract the loan, to levy execution on the judgment and acquire the properties at the execution sale.

(1) So far as the Joint Resolution above referred to is concerned, its own terminology seems to be too clear to admit of any doubt:

> "Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but they shall dispose of real estate so obtained within five years after receiving title."

(2) The contention that the Corporation lacked authority under its Articles of Incorporation to lend the money and lacked power to collect its loan is a matter purely of local law. The District Court held that the Corporation had power under its charter to contract the loan and collect it (R. 34). The Supreme Court upheld the lower court's decision (R. 279-283). The reasoning of the District Court is sound. Central Cambalache, Inc., was engaged in the business of producing sugar from sugar cane. The amount

of land which it might itself legally own for the purpose of growing cane was limited. But it had to have a supply of cane. Whether it assured this supply by financing farmers to grow cane or by lending money to a farmer to acquire land for that purpose would seem to make little difference. Article 4 of the Articles of Incorporation expressly covers the situation by providing that the Corporation was organized for the purpose of planting and acquiring sugar cane and the operation of said cane and its production "with all the negotiations required for the attainment of such objects such as the purchase and lease of lands." (R. 52). The lower court held that the loan here involved was in aid of these purposes.

Even if the loan had been *ultra vires* Fernando González Cabeza and his successors were not in a position to raise the question. He had voluntarily contracted with the Corporation and had received the benefits of the loan made by the Corporation. They could neither raise the question of *ultra vires* nor contest on that ground the right of the Corporation to collect the loan or realize on the security. (7 *Fletcher Cyclopedia Corporations* (Permanent Edition) § 3487, p. 643, and cases there cited. *Union Mutual Bank of St. Louis* v. *Mathews,* 98 U. S. 621. Note 125 ALR 1523.)

The Circuit Court (R. 412) correctly held that since Congress made no provision for the enforcement of the Joint Resolution of May 1, 1900, the matter of enforcement was entirely a matter of local law and that the Supreme Court of Puerto Rico, unless inescapably wrong, was the proper judge of whether or not the holding by a corporation of over 500 acres of agricultural land is subject to collateral attack. In so deciding the Circuit Court correctly followed the decision of this Court in *Puerto Rico* v. *Ruberi Hermanos, Inc.,* 309 U. S. 543, and an unbroken line of authorities of the Supreme Court of Puerto Rico extending back over a period of many years. If the Petitioners' contention were sustained, countless real property transactions entered into since 1900 would be upset and the entire economy of Puerto Rico disrupted.

That there are no persuasive considerations of public policy involved in this case is demonstrated by the very language of the Joint Resolution of Congress above quoted, which itself declares the public policy.

III

The alleged defects in the proceedings to collect the original loan.

This is a matter of local law as interpreted by the Supreme Court of the Territory.

A. The Summons.

This point is discussed at length in the opinion of the Supreme Court (R. 283-288). Section 89 of the Code of Civil Procedure provides that the summons must contain a direction that the defendant appear and answer within ten days. The summons only notified the defendants "that in case of your failure to appear and answer said complaint within ten days . . . the plaintiff may obtain judgment according to the prayer of the complaint" (R. 9-10). The court held that this was substantial compliance with the statute. The court also held that the summons complied with the requirement of the statute that the summons should state the sum for which judgment would be taken, since the amount demanded in the prayer had already been stated in an earlier part of the summons. This seems too clear for argument.

B. The entry of judgment.

The judgment is copied at page 76 of the Record. The action was for the collection of money. It was not a mortgage foreclosure proceeding. Therefore, the Clerk was authorized by Article 194 of the Code of Civil Procedure to enter judgment. The pertinent part of the judgment is copied in the complaint (R. 10-11). Judgment was entered

for "the amount of fifty-six thousand five hundred seventy-four dollars, and seven cents, specified in the summons, which is the total amount of the two loans above-mentioned, with their legal interest, as well as the interest that may accrue at the agreed rate until full payment of the amount and costs."

The judgment provided for interest at the "agreed" rate rather than the "legal" rate. The Supreme Court also covered this point at length (R. 288-299) discussing the Roman, Spanish and Puerto Rican jurisprudence. The court stated that even in a summary foreclosure proceeding, a judgment which awards more interest than that agreed upon does not give ground for reversal but only for modification, citing *Muñoz* v. *Nieves*, 53 PRR 331, and two California cases.

Here again the opinion of the Supreme Court would seem to be eminently sound.

C. The execution of the judgment.

(a) The contention that the execution of the judgment was fatally defective because it does not appear that personal property was first attached and sold.

It is alleged in the complaint that the Marshal executed the order of attachment "by attaching only the mortgaged properties" (R. 11).

The writ of execution directed the Marshal to satisfy the judgment out of personal property and should they be insufficient, then the real property (R. 80). There is no allegation nor any proof that there was personal property out of which the judgment could have been satisfied, or that the Marshal did not comply with his duty to attempt to find it. As is customary, the plaintiff indicated real property from which the judgment might be satisfied. The Supreme Court correctly held that the fact that in the writ of execution the Marshal was not required to satisfy the judgment first out of personal property was cured by the appearance of the attorney for the plaintiffs at the sale and requesting the sale of the real properties in one block. Moreover, the

writ actually did direct the Marshal to proceed first against the personal property (R. 80).

(b) The sale of the properties in one block instead of in separate pieces.

Attorney Lens Cuena appeared on behalf of the defendants at the sale and asked that the parcels be sold in one block, as "that was the best way to obtain a more profitable bid."

There is no allegation nor evidence that Attorney Lens Cuena was not authorized to represent the defendants. If the defendants were seriously attacking the representation they should at least have alleged and proven that no such authorization was given.

The contention that a defendant cannot authorize the sale of his properties in one block even if he wants to do so, is frivolous.

(c) The fact that more properties were sold on the sale than had been mortgaged (Point IV, Br. 19).

The answer is that this was not a foreclosure proceeding but an ordinary action to collect a debt. Execution in such an action may be had against *any* properties of the debtor.

IV

The deed of ratification

The Supreme Court, having held that there were no vital defects in the proceedings, stated that it was relieved from considering whether the deed of August 26, 1927, constitutes a ratification of a title.

The lower court, after having held that the proceedings were defective, decided that the defects, except with respect to the minor José Antonio, were cured by the ratification contained in the deed of August 26, 1927.

The heirs of Fernando González Cabeza had remained in possession after the public sale. They had some equipment

and plantings of cane. Oliver, Matienzo & Co., S. en C., agreed to pay them $28,670.00 for the equipment and cane, of which $9,625.78 was deducted to pay off a crop loan which they owed to Central Cambalache. Clause D of this agreement (R. 191) provides:

> "It is expressly agreed that Mrs. Elisa Campos and her children voluntarily waive and convey any other rights which they might have on the properties belonging to Oliver, Matienzo & Company, acquired by purchase at public auction and specifically the rights of homestead which they may have thereon, which waiver is made in favor of Oliver, Matienzo & Company, in consideration also of the amount received by the first, according to the act approved on March twelve, nineteen hundred and three."

This provision conclusively cures any defects that there may have been in the procedure in so far as everyone except the minor is concerned.

While the Supreme Court deemed it unnecessary to consider the deed it did observe that while José Antonio González Cabeza may not have been duly represented in the deed, he ratified it on becoming of age by accepting the benefits. José Antonio on becoming of age had mortgaged property purchased for him out of his share of the consideration received, for a loan of $500.00. The Supreme Court cited Section 1263 of the Civil Code as authority for the proposition that the minor by mortgaging the property after he had become of age thereby ratified the contract. This is a matter of interpretation of local law and is entirely reasonable. One who has accepted the benefits of a transaction is barred from later attacking the transaction itself.

Conclusion

The present case presents no question of law as to which there is a difference of opinion in the various Circuits. There is no serious contention that the decision of the Circuit Court is contrary to the decisions of this Court.

Petitioners present no new problem of public interest which requires determination. The decision of the Circuit Court conforms with the express public policy as declared by the Joint Resolution of Congress of May 1, 1900.

Practically all of the issues raised are questions of interpretation of local law and procedure as applied to specific facts. The only possible federal question is resolved by the express language of the federal statute which Petitioners ask this Court to interpret.

The petition for a writ of certiorari should be denied.

San Juan, P. R., January 27, 1947.

Respectfully submitted,

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